Supreme Court, U.S.
FILED

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No.

IN THE
Supreme Court of the United States

CROPLIFE AMERICA, *ET AL.*,

Petitioners,

v.

WASHINGTON TOXICS COALITION, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a case brought to determine whether a federal agency implementing its statutory mandate has violated procedural requirements of the Endangered Species Act ("ESA"), is the lawfulness of the agency's action judged pursuant to Administrative Procedure Act ("APA") standards and methods or is the court free to make a *de novo* determination about how the agency should have proceeded?

2. Whether (even assuming that APA standards do not apply) in reviewing the federal agency's actions here, the courts below erred in concluding that:

a. A federal agency "violates the ESA" by not engaging in "formal or informal consultation" with the Secretary of Commerce (16 U.S.C. § 1536(a)(2)), where implementing regulations require consultation only if the agency concludes that its action "may affect listed species or critical habitat" (50 C.F.R. § 402.14(a)); and

b. Where a comprehensive statute (the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA")) prescribes ESA-specific limitations (7 U.S.C. §§ 136(*l*), 136d(c)) on when the use of an approved pesticide shall be suspended in light of ESA concerns, a court can enjoin pesticide use based on an ESA "violation" without regard to whether the FIFRA standards have been met?

PARTIES TO THE PROCEEDINGS

Petitioners – who were jointly represented as intervenor-defendants before the district court and as appellants in the Ninth Circuit – are CropLife America (formerly American Crop Protection Association), Agricultural Cooperative Council of Oregon, Agricultural Retailers Association, American Forest Resource Council, California Agricultural Aircraft Association, Far West Agribusiness Association, Fruit Growers League of Jackson County, Hood River Grower-Shipper Association, Hop Growers of Washington, Idaho Mint Growers Association, Malheur County Onion Growers Association, National Agricultural Aviation Association, National Potato Council, Orchard View Farms, Oregon Agricultural Chemicals & Fertilizers Association, Oregon Alfalfa Seed Growers Association, Oregon Cattlemen's Association, Oregon Cranberry Network (formerly Oregon Cranberry Farmers' Alliance), Oregon Dairy Farmers Association, Oregon Forest Industries Council, Oregon Farm Bureau Federation, Oregon Hop Growers Association, Oregon Horticultural Society, Oregon Seed Council, Oregonians for Food and Shelter, USA Dry Pea and Lentil Council, Wasco County Fruit & Produce League, Washington Association of Wheat Growers, Washington Mint Growers Association, Washington State Horticultural Association, Washington Friends of Farms and Forests, Western Plant Health Association (formerly California Plant Health Association), Western Washington Agricultural Association, and Western Washington Golf Course Superintendents Association.

Respondents Washington Toxics Coalition, Northwest Coalition for Alternatives to Pesticides, Pacific Coast Federation of Fishermen's Associations, Inc., and Institute

for Fisheries Resources were plaintiffs before the district court and appellees in the Ninth Circuit.

The United States Environmental Protection Agency ("EPA") and the Administrator, EPA (then Christine Todd Whitman and now Stephen L. Johnson) were the lead defendants before the district court and appellants in the Ninth Circuit. The name of current EPA Administrator Johnson is substituted pursuant to Rule 35.

In addition to petitioners, the Washington State Farm Bureau and Washington State Potato Commission were intervenor-defendants in the district court and were separately represented as appellants in the Ninth Circuit.

RULE 29.6 STATEMENT

None of the petitioners has a parent company, and no publicly held company owns a 10% equity interest or more in any petitioner.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners CropLife America, *et al.*, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-19a) is reported at 413 F.3d 1024. The orders of the United States District Court for the Western District of Washington dated January 22, 2004 (App., *infra*, 20a-87a), August 8, 2003 (App., *infra*, 88a-117a), July 16, 2003 (App., *infra*, 118a-123a), and July 2, 2002 (App., *infra*, 124a-150a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 29, 2005. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).